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SUMMARY RECORD OF THE 224th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 June 1995, at 10 a.m.

Chairperson: Ms. BELEMBAOGO

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GE.95-16860 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 5) (continued)

Belgium (continued) (CRC/C/11/Add.4; CRC/C.9/WP.4; HRI/CORE/1/Add.1/Rev.1)

1. Miss MASON said that the complete removal of a child from parental care represented a final step since it affected all parental rights and responsibilities. The report gave examples of conduct which could result in removal, such as ill-treatment or failure to provide the child with adequate living conditions. She agreed that physical protection of the child was necessary and that it might in some instances be in his best interests to be removed temporarily. There was also a need for the child to associate with his parents for emotional sustenance, which sometimes only a parent could give.

2. In her experience in family courts, whenever children had been removed from an abusive environment for their protection or to what was considered a better environment, they had almost invariably requested to be returned to their homes and families. Therefore, she would like to ascertain from the Belgian delegation whether, in its opinion, complete removal could be in the best interests of the child when it severed all family ties, legal contacts and responsibilities. She would also like to know whether the child was given an opportunity to express his views and at what point he was allowed to do so; the report stated that the child was never asked to give his opinion when there was a conflict between the two parents. She asked what part was played by counselling in the process of complete removal with a view to bringing the family together again. If the child or parents wished to have the process reversed, she asked whether there was a right of appeal at the federal level or only through the juvenile court. Referring to paragraph 231 of the report, (CRC/C/11/Add.4), she inquired whether anything was being done to regularize foster care.

3. Mr. HAMMARBERG, referring to family reunification, said that tension seemed to exist in most European countries where efforts were being made to avoid a large influx of refugees. On the other hand, the Convention contained the important principle that a child should be able to live with his family. There were certain restrictions in that regard and the parents of children might not always be available. Furthermore, the mother or father might not be alive and in those cases another relative could be as important for the child. Consideration should be given to the individual case rather than to predetermined criteria.

4. He wished to draw attention to reports of long delays in the taking of decisions on applications for family reunification. If that was true, he would like to know what was being done to minimize such delays. One or two years was a very long time for a child to wait and efforts should be made to reduce the waiting time.

5. Ms. SANTOS PAIS said, with regard to foster care, that the Convention recognized the importance of the family environment as being crucial for the development of the child. In that connection, she noted that, under

article 9, States parties should ensure that a child should not be separated from his parents against his will, except when it was determined that such separation was necessary for the best interest for the child.

6. Information originating in Belgium indicated that there was a tendency for children from the lowest strata of society to be placed outside their commune of origin. The situation was reviewed periodically in order to enable the child to return to the family environment once the family's financial situation improved or State aid made return possible. In the case of the children of immigrants, the child became integrated into Belgian culture and increasingly alienated from his original culture. She would like to know how Belgium struck a balance between allowing the child to remain in the country and taking measures which would regularize his situation.

7. Mr. MOMBESHORA asked whether the Government had carried out a study to determine the reason for the high divorce rate in Belgium.

8. Ms. BADRAN, referring to the question of adoption, noted that in some cases the State allowed only one person to adopt a child. She would like to know whether, in the delegation's opinion, that created a normal situation for the child.

9. Ms. KARP noted the statement in the report that failure on the part of the parents to provide adequate living conditions was a reason for the removal of children from parental authority. She would like to know what relationship or coordination existed between services that dealt with family-crisis situations and what social benefits were available for those who did not have adequate living conditions.

10. Mr. HAMMARBERG noted that, with regard to adoption, the Government was considering accepting the consent of a child at about the age of 15. He thought that that might be a bit late and asked whether the possibility of consent at a lower age had been discussed. He noted that the French Community had declared its adherence to The Hague Convention and that nothing had been said about the Flemish Community in that regard. Were there any plans in the Flemish Community to follow the example of its French counterpart.

11. On the question of ill-treatment, he would like to know whether there existed legislation banning mental or physical abuse of any form against the child, even in the home. It did not seem that Belgium had a total ban on such abuse and he wondered whether spanking in the home or in school was allowed. He would like to know what the situation was on that point and what role was played by the school and the health system regarding possible cases of ill-treatment.

12. Ms. BADRAN said that, according to the report, there was a substantial number of family welfare services. However, she would like to know how effective the family welfare system was and the extent of its services.

13. Ms. KARP, referring to the question of asylum-seekers, said it seemed that some local authorities refused to provide residence permits and social services for those persons. She had been informed that the Federal Government had called such action illegal and would like to know what had been done to cope with the problem.

14. Mr. VAN KEYMEULEN (Belgium) said that, with regard to the protection of young people at the federal and Community levels, provision was made for measures of various kinds, including obligatory measures. Some measures applied to parents and others to children. Efforts were always made to help people through the use of the least restrictive measures possible. There were three types of measure which sought to protect the child against ill-treatment. Where family-related and other social measures were not properly implemented, a law provided for the appointment of a qualified person to execute those measures in the best interests of the child.

15. National legislation was positive and sought to prevent more serious situations from arising. With regard to removal from parental authority, measures could be taken in the case of parents who ill-treated their children or failed to provide them with adequate living conditions. In the Flemish Community, committees concerned with the welfare of juveniles with behavioural problems organized effective assistance for the juveniles and the persons having parental authority over them in the best interests of the juveniles themselves. Sometimes the entire family could be assisted by social workers belonging to private organizations who gave advice on the upbringing of the children.

16. Referring to foster placement, he said that Belgian law must set up a system which, while enabling the child to be taken temporarily into a foster home, encouraged relations with his family of origin and his return to it.

17. Mr. LELIEVRE said with regard to family placement that if the child was over 14 years of age, his written consent was required. It should be noted that in the French Community in 1993, 4,400 young persons had been placed in public institutions and 2,000 had been taken into foster homes.

18. Another question raised by Ms. Santos Pais had concerned the relationship between poverty and the tendency for children to be taken away from their home environment. The report on poverty produced by the King Baudouin Foundation had concluded that children from poor families were more likely to be removed from their homes. That was broadly confirmed by information supplied by the social services. To counter that tendency, a number of initiatives had been launched at the federal and Community levels. Community policy was aimed broadly at achieving a redistribution of services based on programming studies. The Community Council for Assistance to Young People would be urging the incoming Minister for Assistance to Youth to make that policy a priority for the government of the French Community. Another possible avenue was to ensure that certain articles of the 1991 Decree on assistance to young people were fully implemented, such as article 56, which provided for closer links between the French Community authorities and the social assistance centres responsible for providing assistance to poor families. With regard to the

periods for which children could be kept in placement in the French Community, he noted that, as in the Flemish Community, decisions were subject to obligatory reviews at specified intervals, and the authorities were obliged to arrange visits to children in care.

19. Mr. VAN KEYMEULEN (Belgium) said that specific measures had been taken in response to the comments made in the report of the King Baudouin Foundation on the number of children from poor backgrounds removed from the family environment. Those had included initiatives at the Prime Minister level. Working groups had been set up within the departments concerned to deal with the many proposals made in the report, careful consideration had been given to the measures which would be needed to attain specific strategic objectives, and action plans had been drawn up to assist the incoming Government in tackling some of the major problems.

20. Mr. DEBRULLE (Belgium), replying to the question asked concerning the high divorce rate and the existence of counselling services, noted that divorce was on the increase in Belgium as in other European countries. Among the factors which had contributed to that increase were the enhanced status and financial autonomy of women, and the decline in the influence of the churches, which had formerly discouraged divorce. Within the French Community, a number of counselling services were available to help couples overcome difficulties which might lead to their getting divorced.

21. Mr. VAN KEYMEULEN (Belgium) pointed out that legislation enacted in the past 15 years had removed the almost insurmountable legal obstacles which had generally discouraged divorce. An extensive network of subsidized counselling centres existed throughout the Flemish Community.

22. Mr. LELIEVRE (Belgium) drew the Committee's attention to the existence in the French Community of family mediation services which played a very valuable role in resolving family disputes. The French Community had recently authorized funding for new services entitled "Services d'espace-rencontre", whose purpose was to facilitate parental visits when visits became difficult as a result of a breakdown in relationships in the family.

23. Replying to the question about ill-treatment of children within the family, he said that in the French Community the services set up to help abused children were based mainly on two statutes. The first was a decree of 4 March 1991 which had set up multidisciplinary teams to aid abused children. The second was the 1991 Decree relating to youth assistance, under which counselling services were provided for children and young people who had suffered ill-treatment. In the 13 judicial districts in the French Community, 14 teams were working under the auspices of the Office de la naissance et de l'enfance (ONE) to assist abused children. A campaign which had been launched to improve prevention and break the "code of silence", and which had been inspired by article 34 of the Convention, had led to a great increase in the number of abuse cases reported to youth assistance counsellors and the "SOS" teams, which suggested that greater funding would have to be provided for the existing services.

24. Mr. VAN KEYMEULEN (Belgium) said that in the Flemish Community a number of preventive initiatives had been launched. Those included regular visits by social workers working under the auspices of the Kind en Gezin organization, which corresponded to the ONE in the French Community. Those visits to families with children under the age of 3 made it possible at an early stage to detect any problems which might lead to maltreatment. In addition, special centres existed in each commune to provide medical and psychological help to victims of neglect and maltreatment.

25. Mr. DEBRULLE (Belgium), replying to the questions raised by Mr. Hammarberg regarding the role of schools and health institutions in the detection of child abuse, said that professionals such as teachers, nurses or doctors were under a legal obligation to observe a code of professional confidentiality. On the other hand, where there were good reasons for suspecting that, for example, a child had been maltreated, they, and indeed anyone else in a similar situation, had a statutory duty to assist the child at risk and in such cases that obligation took precedence.

26. Mr. VAN KEYMEULEN (Belgium) said that, according to available statistics, many of the cases of child abuse had in fact been reported by schools and by the centres set up to help the victims. Schools in the French Community also appointed members of staff in whom children could confide if they had particular problems.

27. Mr. LELIEVRE (Belgium) recalled that all teachers in the French Community in both State and private schools, had been informed through brochures of the help available from various specialized teams, such as the "SOS Children" teams of the specialist counsellors, and were encouraged to obtain further information. Another brochure produced by the Ministry of Justice aimed at prevention urged the general public to give absolute priority to assisting children at risk by notifying the specialist assistance teams.

28. Mr. DEBRULLE (Belgium), turning to the questions put by members on the situation of refugees and asylum-seekers, said that Belgium, in common with other countries, had been faced with a considerable rise in the number of migrants, refugees and asylum-seekers entering the country. The authorities were under pressure to control and limit the rise in immigration without making any concessions to political extremists who exploited the rise in immigration in order to play on the fears of ordinary people worried about unemployment, crime and other social problems. They had pursued a policy that was much the same as that of other countries in the European Union. It had attempted to strike a balance between the need to control immigration and the need to stand firm against xenophobia and intolerance. Its efforts had included the signing of a number of readmission agreements with some of the countries which were sources of illegal immigrants to enable them to take back their own nationals.

29. With the entry into force of the Schengen Accord and the Dublin Convention, which the Belgian Government was planning to ratify, applications for asylum and refugee status would be dealt with by one country only and the situation where people were shuttled from one country to another should no longer arise. In addition, specific measures were being directed against illegal immigration and human-trafficking networks. Part of the overall

strategy adopted by Belgium was to argue in its talks with other countries of the European Union on the EUROPOL treaty that the treaty should include specific objectives involving the dismantling of those networks.

30. However, sanctions were not the only answer. The rise in the number of those seeking asylum or refugee status had led to delays in processing applications, and it was more important - and more difficult - than ever to distinguish between bona fide refugees and asylum-seekers within the meaning of the Convention relating to the Status of Refugees and those who sought to enter the country illegally. Efforts were being made by the European Union to establish appropriate guidelines but the problem remained.

31. Belgium had been obliged by the rising number of immigrants to recruit more and better trained staff to deal effectively with refugees and to prevent the system from becoming overly bureaucratic and inhuman. Highly trained staff were available to help assess applications from minors, and similar provisions were made for women, the staff involved being specially trained to ensure that they were fully aware of all the reasons which might nowadays prompt women to become refugees.

32. Another question had concerned the extent to which, under the system operated in Belgium, it was possible to consider individual cases on their merits, rather than being bound by a series of rigid rules. Referring to the written answers given to questions 14 and 23 on the list of issues, he said that it was the policy of the Belgian authorities to apply general legal principles as a safeguard against arbitrary decisions, while still allowing cases to be considered on their own merits, thereby enabling those responsible for making the decision to take account of the individual circumstances and humanitarian aspects of a particular case.

33. With regard to the refusal by some social assistance centres to pay benefits to refugees and asylum-seekers, recent rulings had confirmed that such refusals were illegal but, given the delays involved, had been of only limited help to the complainants. A more effective solution in the long term would be provided by legislation to promote a more equitable redistribution of refugees and asylum-seekers between the various communes. That, it was hoped, would prevent the creation of ghettos and improve integration.

34. Referring to the question concerning the problems which arose for unaccompanied minors seeking asylum as a result of their lack of any formal legal status, he said it was his understanding that minors in that situation were not allowed as of right to remain in the country until the age of 18. A special procedure could result in them being required to leave the country. The Government was aware, as its written reply had shown, that difficulties could arise in such situations as a result of a child's lack of legal status, and that was a deficiency in the present law which the incoming Government would need to address.

35. Mr. LELIEVRE (Belgium) said that his department had established mechanisms for coordination with the Director-General of the Office des étrangers, which as a general principle, had always been willing, when considering particular cases, to take account of a minor's de facto integration resulting from delays in processing his or her application. It

was far more difficult to make a case for a minor near the age of majority who had been involved in criminal activities. However, minors in that situation still had recourse to a juvenile court judge or the youth assistance counsellor, who could intervene and block deportation proceedings until the minor had reached the age of 18.

36. Mr. VAN KEYMEULEN, replying to Mr. Hammarberg's question about adoption, said that at present, under a provision introduced in the 1969 Adoption Act, the consent of a child who was to be adopted was required if the child was over the age of 15 years, although there was a case for reducing that age. In Belgium, there were two forms of adoption, namely, simple adoption and full adoption. In the case of full adoption, which was the most common form, two adoptive parents were required and they had to be married. It was, however, occasionally possible for one person to adopt a child if after extensive inquiries by the social services and the court, that was considered to be in the best interests of the child concerned. No adoption would be approved by a court unless it was satisfied that the best interests of the child would be served and that those seeking to adopt the child had sound motives for doing so.

37. With regard to the specific case of intercountry adoption, that was governed in Belgium by article 344 of the Civil Code. There, too, the child's interests were considered paramount. Although adoption agencies in Belgium must conform to very strict rules, it was still possible on occasion to adopt a child in Belgium without recourse to such agencies. For that reason, it was highly desirable for Belgium to ratify The Hague Convention, and all the necessary groundwork had been done in the Communities to enable that Convention to come into force. Under the terms of a decree, the organization Kind en Gezin had been designated as the central authority in the Flemish Community for the implementation of that Convention when it came into force.

38. Ms. SANTOS PAIS, referring to the question of the ill-treatment of children in the home, pointed out that article 19 of the Convention encouraged States parties to adopt appropriate measures to protect children from all forms of violence and abuse. The presentation of evidence against parents and guardians was extremely difficult. Several countries had accordingly begun to define parental responsibility and authority in their civil legislation, including the concepts of dialogue, negotiation and the participation of children in family life with the aim of trying to avert ill-treatment entirely. The Committee believed that the response to abuse should go beyond criminal sanction. While noting that Belgium had initiated a resolution on the prohibition of the ill-treatment of children at the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Cairo in the spring of 1995, she wished to know whether Belgian legislation prohibited recourse to ill-treatment in the home and what the Government's ideas were on the subject.

39. Ms. KARP requested clarification of the criminal procedure for addressing the problem of ill-treatment and abuse. There were limitations in evidence provided by children against their parents in cases were there was a conflict of interests. She asked how ill-treatment was dealt with in view of those limitations and whether the Government of Belgium had devised special procedures to enable children to testify against their parents.

40. Ms. BADRAN asked how effective and comprehensive the Belgian welfare system was in serving the family. Was there a need to improve the quality or nature of the services offered?

41. Miss MASON, referring to the subject of sexual abuse, noted that pornography was legal in Belgium. The Convention called on Governments to restrict the use of children in the production of pornography. Given the attitude reflected in paragraph 468 of the report, namely that incest was a private issue to be handled within the family, she wondered whether there was a link between child prostitution and incest. Psychological trauma resulting from sexual abuse manifested itself in most cases, in anti-social behaviour. Children were often removed from the home after incidents of sexual abuse had occurred. She asked whether, in Belgium, children were automatically removed from their families, or whether there were provisions for the perpetrators of such abuse to be removed from the family. The removal of the child increased his feeling of guilt and she wondered what assistance, apart from counselling, was offered to the victims of abuse.

42. Mr. DEBRULLE (Belgium), responding to the question on ill-treatment within the family and the delegation's assessment of the Belgian system, referred to Mr. Van Keymeulen's earlier statement indicating that there were alternatives to repressive measures. That statement appeared to have covered most of the Committee's concerns. Belgium's "graduated approach" embraced a wide range of measures, from the preventive to the repressive, but he wished to stress that the punitive aspect was not the main focus.

43. Mr. LELIEVRE (Belgium) added that the "graduated approach" was intended to assist children who were victims of abuse without need to resort to the courts. Two main channels were pursued before court proceedings or criminal penalties were considered: youth counsellors and multidisciplinary teams of doctors and other professionals.

44. Mr. VAN KEYMEULEN (Belgium) said the same approach was adopted in the Flemish Community. Every effort was made to provide assistance rather than impose punishment and, in so doing, the authorities endeavoured to resolve difficulties in an amicable manner. Five centres had been established and the professional staff in those centres worked earnestly with the families of abused children to find solutions to the problems. Among the preventive methods which had been instituted were a series of "hot-lines" which children could use to report incidents of domestic violence. The main concern was to avoid additional harm to the child, while trying to solve the underlying problems that had led to abuse.

45. Mr. LELIEVRE (Belgium), describing the situation in the French Community, referred to a number of mechanisms to assist children who had been victims of domestic violence. He did not believe there was a need for new services, but acknowledged that there might be room for improvement in the quality of training offered to personnel administering child-assistance services and a need for increased resources. The French Community had also introduced a free telephone service for children. The aim of that service was to provide professional assistance on a 24-hour basis and to supplement the various other activities for the benefit of children. It was expected that the new Belgian Government would continue those services.

46. Mr. DEBRULLE (Belgium) drew attention to the written replies to questions 17 and 30 (M/CRC/C/(FUTURE)), which gave several instances of legislation adopted by the Belgian Parliament up to April 1995 and addressed the concerns expressed by Ms. Karp and Miss Mason about the sexual abuse of minors, procedures for children to give evidence and incest. Belgium's criminal legislation had been under review for several years and, as had been stated the previous day, paragraphs 59 and 60 of the report needed to be updated to reflect developments in national legislation. A child who had been the victim of sexual abuse was guaranteed the right to be accompanied by an adult of his choice during court proceedings, and the statute of limitations did not begin to apply before he reached 18 years of age. The progress made on the laws under review and amendment reflected the concerted approach of Belgian legislators to the issue of ill-treatment and abuse of children.

47. Mr. LELIEVRE (Belgium) said that the Ministry of Justice endorsed the initiatives taken by the Judiciary in Brussels and Charleroi, which involved the videotaping of children during hearings to mitigate the trauma of such hearings. That new approach, in conjunction with the possibility for minors to be accompanied by adults, paved the way for magistrates to alter their professional practices with regard to interrogation and it was expected that new approaches would have to be taken in professional legal training.

48. Mr. VAN KEYMEULEN (Belgium) informed the Committee that every effort was made to ensure that the victims of sexual abuse were placed in foster care. Taking into account the close links existing between parents and children, even in serious cases of abuse, a system of "out-patient" treatment had been introduced. Children were rarely placed in institutions because the authorities did not believe that that was an appropriate solution.

49. Mr. DEBRULLE (Belgium) said he wished to add one point on the question of child prostitution, which had been raised by Miss Mason. New legislation, within the context of the traffic in persons and the exploitation of the prostitution of others, had introduced provisions for the participation of recognized NGOs. A royal decree in course of preparation would allow NGOs to represent victims of sexual abuse and exploitation and act on their behalf during judicial proceedings.

50. Ms. KARP observed that addressing the problem of sexual abuse from the standpoint of criminal law was not a proper approach. She was concerned about the legal question of leaving it to the persons involved in administering treatment to decide when to inform the police or Judiciary of cases of sexual offences. She reiterated her question of the previous day regarding the status of minors as witnesses (para. 60 of the report). She remained concerned about the general attitude reflected by provisions which considered the evidence of children under the age of 15 as lacking in credibility. She would welcome further comment on the fact that in some areas of the country juvenile delinquency among children under 15 years of age was not dealt with because those children were not brought before a court; at the same time, no alternative treatment was offered to those children.

51. Ms. SANTOS PAIS commended the delegation for its Government's preventive, assistance-oriented and multidisciplinary approach and inquired whether there were any provisions in the Civil Code prohibiting the use of corporal

punishment in the upbringing of children. She also asked whether the Government of Belgium was willing to give further thought to article 38 of the Act of 8 April 1965 and the procedure of relinquishment of jurisdiction mentioned in paragraph 63 of the report. She would also encourage reconsideration of article 53 of the Act, which specifically referred to the isolation of minors. She suggested that those provisions should be deleted from the Act.

52. Miss MASON recalled that Mr. James Grant, the late Director-General of UNICEF, had launched an appeal for the total ban of land-mines, not only because of their physical threat to children and the destruction they inflicted, but also because agricultural land was rendered useless by the laying of such mines. She wondered whether Belgium, as a producer and exporter of land-mines, had considered its responsibility for reducing the suffering of children in other parts of the world and giving them a chance of life, survival and development.

53. Mr. KOLOSOV referred to the delegation's written reply to question 25 on the list of issues and paragraph 157 of the report. He asked for a clarification of what appeared to be a contradiction between the Young Persons' Protection Act and the Criminal Code of 12 July 1994.

54. His second query related to the possibility of appealing against sentences. Article 40, paragraph 2 (b) (v), of the Convention on the Rights of the Child required States parties to provide guarantees that children accused of infringing criminal law would have those decisions reviewed by a higher authority or judicial body. Basing his question on the fourth declaration made by Belgium upon ratification of the Convention, he asked whether the King of Belgium was regarded as a competent, independent and impartial authority, as stipulated in the Convention, and whether children could appeal to the King. He drew attention to a further contradiction between that declaration and the statement made in paragraph 428 of the report. That point concerning the ability of minors to appeal against their sentences had also been made by the Human Rights Committee.

55. Mr. HAMMARBERG asked what the position of the Belgian authorities was in action to combat "sex tourism". If Belgian nationals went abroad and abused young children, what were the possibilities for prosecuting such people in Belgium? What preventive measures were taken to inform the public that such behaviour constituted a violation of the rights of the child?

56. Ms. BADRAN pointed out that a discrepancy appeared to exist between paragraphs 414 and 415 of the Belgian report. Paragraph 414 stated that a minor might be kept temporarily in a local prison, if there was no other institution available, for a maximum of 15 days, whereas paragraph 415 stated that, according to a study, such temporary measures could easily last from one to three years, depending on the judicial circuit. An explanation of that discrepancy was requested.

57. Mr. LELIEVRE (Belgium) said, in relation to alternative treatment, that insufficient emphasis had been given to the link which should exist in efforts to combat child abuse between the psychosocial and legal sectors. It was important to remember that in the French Community a youth counsellor was a

civil servant. He was obliged to report offenders, including those guilty of child abuse. He was bound by a code of ethics and the requirement of confidentiality. In practice, that meant that in each judicial district prior contact was made between a counsellor and the public prosecutor, so that the psychosocial sector could take responsibility for the case and deal appropriately with the situation in the best interests of the child involved. Clearly, if such an approach failed as a result of the heedless intervention of the public prosecutor, problems could arise. In relation to "SOS Children" teams, it should be recalled that article 52 of the Medical and Ethical Code stated that doctors were duty bound to treat children who had been abused, in particular by reporting offenders to the competent authorities. The intervention of the "SOS Children" teams was only possible when a child's safety was at risk.

58. In the French and Flemish Communities young offenders who were taken into care were given assistance. For example, they were accommodated in private-sector hostels. In the French Community, such hostels were reserved for young people, irrespective of whether or not they were offenders. However, public-sector hostels were reserved for young people who had committed offences and included secure institutions. Educational guidance centres and special educational services also existed allowing young offenders to perform community service, for example in hospitals.

59. Mr. VAN KEYMEULEN (Belgium) said that the French and Flemish Community systems were very similar. Unlike in some other countries, the Belgian authorities did not have the right to punish young people. A system of voluntary and compulsory assistance existed. Simple measures were used rather than different forms of punishment, and included follow-up and residential measures. Also, alternative punishments were available in the form of charity and educational duties to be carried out by minors. Those measures had been very valuable in preventing children being taken into care.

60. Mr. DEBRULLE (Belgium) said that Mr. Kolosov had quite correctly detected a certain ambiguity in the initial report. A minor between the ages of 16 and 18 could be brought before the assize court. In accordance with existing legislation, a minor brought before the court for an offence punishable by the death penalty could receive such a punishment. However, in view of article 77 of the Criminal Code, in the light of an offender's age the death penalty could be replaced by life imprisonment. The ambiguity detected in the report would be dealt with. In Belgium the hope had been expressed that the death penalty would be abolished, and a Bill for abolition of the death penalty in times of peace or war was under discussion in the Belgian Parliament. The debate had focused on whether the death penalty could be replaced by other statutory penalties. Mr. Kolosov had stated that the Belgian declaration concerning article 42 of the Criminal Code might not be strictly relevant, since the King was able, as a competent, independent and impartial authority, to grant pardons. Since the King's right to grant pardons was a purely discretionary one, it was doubtful whether it could be assimilated to the description given in the Convention. Nevertheless, the matter would be considered further.

61. In response to Miss Mason, he stated that Belgium had ratified the 1980 Convention on land-mines and was currently participating in work in Vienna on that subject. A moratorium existed on the export of land-mines. The European Union had recently informed the United Nations that it would also adopt a moratorium on the export of such weapons. Belgian legislation was at the forefront because it prohibited the production and export of mines. Furthermore, Belgium would chair the Ministerial Conference to be held in Geneva in July 1995 on the humanitarian aspects of the use of land-mines.

62. Regarding "sex tourism", Belgium believed it was competent to take legal action against and to convict anyone found guilty of offences in that area, even foreigners committing offences abroad, on condition that they were subject to "double conviction", i.e. the same acts were also punishable in the country where they had been committed. Legal action would be taken if sexual exploitation of a child under 16 was proven. The new legislation did not require such acts to be officially denounced by the foreign country involved or the victim to issue a complaint. The public prosecutor had the right to initiate proceedings in such matters.

63. He had duly noted the comments made by Ms. Karp on paragraph 60 of the initial report regarding the spirit of the Criminal Code in relation to evidence given by children under 15. A national committee for the reform of the Criminal Code was now in existence. Any comments made by the Committee on the Rights of the Child would be passed on to the national committee, which would then decide how to respond.

64. In response to Ms. Santos Pais's question, he said that article 371 of the Civil Code would very shortly be amended. The old article stated that a child of any age owed honour and respect to his parents. The new article, however, stipulated that a child and his father and mother owed each other mutual respect, whatever their age. In legal terms, the word "mutual" could imply that certain types of conduct by a parent towards his child were not in conformity with the wording used. The concerns expressed had been noted and more detailed consideration would be given to the preparatory work on the new provisions so as to ascertain to what extent they met those concerns.

65. Mr. VAN KEYMEULEN (Belgium) said that the relinquishment of jurisdiction was governed by article 38 of the Act of 8 April 1965, which was intended to provide assistance. However, two loopholes existed in articles 53 and 38 of the Act. The former had been more or less repealed, article 53 bis stating that article 53 was to be repealed at a date to be determined by Royal Decree and debated in the Council of Ministers. An organizational problem existed, but as soon as it was resolved article 53 would lapse. It would perhaps have been better to set a deadline in article 53 bis. The article could be applied for offences carrying prison sentences of one year or more. It did not apply, however, to minors under the age of 14. Furthermore, minors could be ordered to be detained only once by a juvenile court in any particular case. In the Bouamer case, the Belgian authorities had been found guilty because the minor involved had been placed in detention on several occasions. That possibility was now excluded as a result of the amendments introduced. The transfer of jurisdiction was an exception to the principle employed in providing

assistance. It was doubtful whether the article should be included in the overall context of assistance provided for by the 1965 Act. In the Flemish Community there had been only 95 instances of transfer of jurisdiction in cases involving minors between 1982 and 1990.

66. Mr. LELIEVRE (Belgium) said that during a visit to Belgium by the European Committee for the Prevention of Torture and Cruel or Inhuman Treatment in 1993, the Committee had recommended that the Belgian authorities should no longer detain minors for as long as they had done in the past. The problem did not apply to the whole of the French Community. However, it did exist in a number of judicial districts, notably that of Brussels. In relation to article 38 of the reformed Act of 1965, it was important to mention that the transfer of jurisdiction continued to be linked to the preparation of medical and psychological reports and social investigations. Consequently, the transfer of jurisdiction was only possible after studying the personality of a young offender rather than just the offence he had committed.

67. The CHAIRPERSON invited Committee members to present their preliminary observations.

68. Mr. MOMBESHORA said that the Belgian report contained obvious omissions on basic health indicators such as infant mortality and life expectancy. Nevertheless, the description of health services was completely adequate. Among the replies submitted by the Belgian delegation, the reply to question 18 should be supplemented to show a regional breakdown of the statistics provided. It would thus be possible to see the level of efficiency of services in terms of epidemiological patterns of disease and other indicators. It was also important to include in the next report information on whether HIV was a problem which affected children.

69. Mr. HAMMARBERG thanked the Belgian delegation for its open-mindedness and energetic approach towards the problems discussed. Its report contained elements of interesting and refreshing self-criticism. It indicated areas in need of further reform, for example, the integration of article 12 of the Convention. The Committee assumed that Belgium would endeavour to have constant and constructive consultations with NGOs. Belgium had also stated that it was willing to consider further areas, such as adoption (age of consent of minors), the ratification of The Hague Convention and the reservations expressed with a view to withdrawing them. Such an attitude was much appreciated as it contributed to attempts to improve the situation of children, a key tenet of the Convention. It was recommended that statistics should be collected as a basis for future programmes. In that connection, the administrative review taking place should include further consideration of mechanisms for coordination of the implementation of the Convention.

70. Belgium had made great progress in its treatment of immigrant and refugee children. However, it was still necessary to take careful account of all aspects of the policy pursued, particularly in relation to the best interests of those children. For example, rapid decisions were necessary regarding family reunification, and the treatment of unaccompanied minors was of great importance. Trained personnel must be available to conduct child-oriented investigations. Any form of detention of young people must be avoided.

Action to combat xenophobia was also an important aspect of immigration policy; further improvements were still necessary. It was assumed that Belgium had decided to publish its report, together with the summary records of the discussions on it. The published report should also include the Committee's concluding observations, which were intended as advice to national policy-makers on how further improvements could be made. The report should also be translated into Dutch and German.

71. Ms. KARP congratulated the Belgian delegation on the willingness it had shown in its dialogue with the Committee.

72. Ms. BADRAN thanked the Belgian delegation for its report and for the frank and useful dialogue. It was pleasing to see that the Belgian delegation saw no reason to maintain its declaration on article 14 and also that it had proposed a review of its declaration on article 2. Since Belgium was developing its data collection system, she hoped that the reformed system would classify children according to different criteria: for example, individual Communities, languages and background (refugees, normal/single parent families and children born as a consequence of incest and adultery). It was difficult to understand the complexity of the different support systems in operation. Decentralization was a good idea, particularly at the Community level, but at the federal level there was a need for studies to consider the family welfare system and the health and education systems. Interdisciplinary training was also important since many services were provided by different teams which needed to understand each other's disciplines.

73. Ms. SANTOS PAIS welcomed the frankness, openness and cordiality shown by the Belgian delegation. The level of participation was unprecedented. Belgium had shown its willingness to accept the proposals made for further consideration of issues at the national level, including questions concerning its declarations and reservations. The examples Belgium had presented showed that it considered the Convention to be more than a set of theoretical principles. The willingness of the Belgian authorities to accept monitoring by international bodies in such sensitive areas as torture and cruel and inhuman treatment was much appreciated.

74. It was important to institute permanent coordination and consultation mechanisms in order to establish links between all national bodies, for example research centres. The implementation of the Convention implied the participation of civil society; in that connection, the participation of NGOs was particularly important. It was essential to introduce a comprehensive and permanent system for gathering statistics and indicators on children, so as to evaluate the situation in the different Communities and to identify priorities, successes and disparities. During a period of economic recession, the approach adopted by Belgium was encouraging in that priority was attached to the interests of the most underprivileged groups, for example immigrants. In that connection, the placing of children from very poor families outside their homes was particularly important.

75. Belgium must continue to promote the Convention and related training programmes. The Convention should be translated into all the languages used in Belgium so that immigrant children were aware of their fundamental rights. An expanded discussion on the rights of the child, together with a system of

reporting, could lead to an expanded alliance being created in relation to children and their rights, if only by means of supporting government efforts to achieve that end. Efforts should be made to prevent refugee and immigrant children from becoming stranded in ghettos and falling victim to social exclusion. Attention should be paid to developing legislation so that the practical enjoyment of fundamental rights became a reality. Further discussions were necessary on articles 53 and 38 of the reformed Act of 1965, especially in relation to the abolition of the death penalty in times of war and peace. Such a move would be welcomed by the whole of the international community concerned with human rights. The Committee was ready to continue its cooperation with the Belgian Government in implementing the Convention.

76. Miss MASON said that everyone defended the right of children to play. In certain parts of the world that right was taken for granted. However, some children were deprived of it, since they had to support their families in times of economic restraint. In Belgium the right of children to play seemed to have been somewhat abrogated since children were bought and sold for the purposes of competitive sport. How could that be reconciled with the best interests of children and their right to express their views? Were there any legal consequences in that connection? Did such practices represent a contravention of the restrictions set by the Convention on the sale and trafficking of children?

77. Mr. KOLOSOV noted the very serious efforts made in Belgium to protect children's rights. The additional material provided in the course of the discussions on the French and Flemish Communities was appreciated. He congratulated the Belgian delegation, especially since the discussions on its report were being concluded on the International Day for the Defence of Children. It was recommended that the rights of the child should be included as a subject in curricula in schools and teacher-training institutions.

78. The CHAIRPERSON said that the preliminary observations, supported by suggestions and recommendations, would be finalized and sent to the Belgian Government. The Committee hoped that the Belgian delegation would continue to act with dynamism in taking account of the Committee's suggestions.

79. Mr. DEBRULLE (Belgium) expressed appreciation for the Committee's original working methods, which were informal and at the same time demanding. The Belgian authorities would indeed take full account of the Committee's comments and suggestions in the future implementation of the Convention.

The meeting rose at 1.05 p.m.